
PREFACE TO THE FOURTH EDITION

It has been 40 years since the wave of federal statutory initiatives of the early 1970s ushered in the modern era of environmental law. Seen then as a specialized “niche” area of practice and policy, environmental law has since matured into a broad and complex body of law which, like tax law, touches many aspects of business and social relations. Today, virtually all law firms of any substantial size have practitioners, if not departments of practitioners, devoted to their clients’ environmental law needs. Many federal, state, and regional agencies and local governments also have substantial numbers of environmental attorneys to help navigate or enforce the maze of regulations. Every law school in the nation offers at least the survey course in environmental law, and many offer numerous upper level courses in the field. In short, environmental law is no longer an unusual or fringe subject—it has become a mainstream field of legal practice and policy resting on a complex array of statutes, regulations, and cases.

We have tried in this book to make environmental law come alive, to demonstrate for the student what environmental law is about and then place that subject matter in practice settings to show the range of what environmental lawyers actually experience. In teaching the environmental survey course, all four of us felt that our students could analyze well the policy aspects of environmental law, but were more guarded about their understanding of what practicing environmental law really feels like. We believe this focus of the book—making practice settings and practice problems a prominent feature for instructors and students—significantly distinguishes it from the many other commendable casebooks available on the topic of environmental law. Indeed, we would not have bothered to add to the array of environmental law casebooks if we did not believe ours would offer an alternative that is different in a meaningful and useful way.

Environmental law is an exciting field, and many are drawn to the dynamic subject matter—the world around us—and its rich interdisciplinary confluence of politics, economics, science, and philosophy. The design and implementation of environmental law can make a substantial difference in the quality of life for present and future generations, and each practitioner has a realistic expectation of being able to participate in that effect. Because of its important mission, moreover, environmental law reaches across many fields of social and economic life, allowing its practitioners to interact with other professionals and to work in a variety of settings. And because the environment changes so, too, does environmental law, making its practice anything but static and monotonous. In short, practicing environmental law can be stimulating and personally rewarding.

Alas, there is another side to all of these positive qualities. As a body of law drawing from so many disciplines, environmental law can appear to have no central foundation or theme. As a body of law that so

profoundly affects the quality of life today and into the future, tremendous pressure often is placed on the institutions and practitioners of environmental law. As a body of law that touches so many different walks of life, environmental law can appear fragmented and overly detailed. And as a body of law in constant flux, environmental law can appear to have no deliberate direction. In short, practicing environmental law can, on occasion, be frustrating and even personally draining. Nonetheless, we believe it is one of the most exciting and important areas of practice in the entire legal field.

Our experience includes over 35 years of combined environmental law practice, in both government, corporate, and private firm settings, and a combined 75 years of full-time law school teaching. Reflecting our practice backgrounds, this text has been specifically designed to match the modern realities of environmental law. We begin with an introductory chapter, designed to provide the student's first exposure to environmental law through the experience of environmental lawyers. Using a series of case studies, this introduction emphasizes the importance of thinking about environmental law in three dimensions: (1) the basic approaches employed by environmental law; (2) the diversity of practice settings in which environmental law arises as a driving factor; and (3) the breadth of policy issues facing the future of environmental law.

Following the introductory chapter, in Part I of the book we build a conceptual foundation in the substantive law for the student with a survey of six approaches to environmental law: (1) conservation of environmental amenities; (2) regulating environmental harms; (3) remedying environmental harms; (4) planning and information programs; (5) public lands management; and (6) climate change regulation. Rather than attempt to canvass every environmental law, we use one or two exemplary statutes for each theme in the typology and cover related statutes and materials in sufficient detail to further illustrate the relevant approach. Deeper instruction in other statutes and legal institutions comes in subsequent parts of the book in connection with development of the practice and policy themes rather than as discrete divisions of study.

Part II is the most innovative facet of the text, using practice settings as a way of giving life to the substantive content of environmental law. Put simply, Part II focuses on what environmental lawyers actually do. This section uses examples and problems to illustrate five key practice contexts: (1) administrative rulemaking and permitting; (2) compliance counseling; (3) enforcement; (4) private litigation; and (5) business and real estate transactions. Attention to practice settings at this breadth and level of detail is unprecedented among environmental law casebooks, and we believe it will make our text particularly useful to instructors wishing to impart some appreciation of practice challenges and to

students eager to get a taste of what environmental practitioners experience.

As has been true since our first edition, environmental law has continued to evolve since the publication of the third edition of this text almost four years ago. Unlike our prior editions, however, this fourth edition introduces no significant structural changes to the organization of the text. We believe we found the ideal balance and order of topics in the third edition and have stayed the course!

This edition thus is primarily an update covering significant new statutes, rules, cases, and other materials. Although events involving the Clean Air Act and regulation of greenhouse gas emissions have been the most dynamic in that regard (see chapters 3 and 8), every chapter of the text required attention to the ongoing development of the field.

We have also steadfastly maintained what we believe distinguishes this text from others in the field of environmental law—substantial coverage of practice contexts, with chapters on administrative rulemaking and permitting, compliance counseling, enforcement, private litigation, and business transactions. As in prior editions, practice-oriented problems also appear in the chapters covering substantive topics of environmental law including endangered species, air pollution controls, water pollution controls and wetlands conservation, hazardous waste regulation and remediation, planning and information programs, public lands management, and climate change and renewable energy. We are hopeful that our combination of substantive overview chapters with those covering the practical dimensions of environmental law provides instructors and students fertile ground for exploring the rich context of environmental law.

As always, we are grateful to those who supported our work to keep the text up to date and relevant, including our respective institutions, Vanderbilt, Notre Dame, the University of California, and Minnesota, our research assistants, the team at Foundation Press, and our families and friends. We are delighted to hear from instructors and students about the book—please feel free to contact any of us at jb.ruhl@vanderbilt.edu, nagle.8@nd.edu, salzman@ucsb.edu, and aklass@umn.edu.

JBR
JCN
JES
ABK